

Go back to [Contents](#)

VIC

Victorian Aboriginal groups are considering a regional agreement approach to native title issues that could eliminate claims on individual landholders in return for agreements with government on service delivery, funding and access to resources. (*Age*, 15 Jan, pA1 and A2) Aboriginal leaders and the Premier Jeff Kennett discussed native title and options for a state agreement for indigenous rights on pastoral leases. (*Age*, 27 Jan, pA3; 30 Jan, pA4)

Go back to [Contents](#)

WIK DECISION

High Court due to hand down decision in the Wik case on Monday (23rd Dec); which will decide the key issue of whether pastoral leases automatically extinguish native title as a matter of law. (*Fin R*, 19 Dec, p3)* 42% of Australia is covered by pastoral leases. (*Fin R*, 23 Dec, p2)*

Press releases from a number of bodies including the Indigenous Land Corporation, Human Rights and Equal Opportunity Commission, Aboriginal and Torres Strait Islander Social Justice Commissioner and ACFOA Human Rights Office all welcomed the High Court's decision and urged the government to recognise the rights of indigenous Australians. (*Press releases 23 December, 24 December, 29 December*) The National Farmers Federation claimed the decision will create more uncertainty for pastoralists and others and called for the government to enact legislation which would allow pastoral leases to extinguish native title. (*Press release 23 December*) The Prime Minister expressed disappointment with the decision in the Wik case which he believed appears to overturn one of the principles on which the community's understanding of native title had proceeded. (*Press release 24 December*) Mr Howard foreshadowed an overhaul of the Native Title Act in the wake of the Wik decision. (*CT*, 25 Dec, p1)

Age editor discusses the Wik judgment and concludes: 'unsatisfactory though it may seem to those who prefer clear and neat answers to complex legal, political and moral questions, the High Court decision represents a tolerable compromise.' (*Age*, 26 Dec, pA14) The Australian's editor stresses need for negotiated and regional agreements, (*Aus*, 26 Dec, p8) a view also held by Rick Farley in the same paper. (*Aus*, 26 Dec, p9)

Any bid by the Federal Government to use legislation to resolve legal problems resulting from the High Court decision could face defeat in Senate. (*Age* 26 Dec, p1); Senator Dee Margetts said Green Senators would reject a government move to extinguish native title. (*CT*, 26 Dec, p5)

Henry Reynolds discusses the Wik judgment in the context of the history of land tenure and land law in Australian history: 'the High Court decision to preserve native title rights on pastoral leases is deeply rooted in, and sharply aware of, the realities of history.' (*SMH*, 27 Dec, p13) The editor of the SMH says 'the reaction in some quarters to the High Court's judgment has been intemperate and unhelpful.' (*SMH*, 27 Dec, p18)

Graziers in Cape York want to pursue negotiated settlements rather than litigation, (*SMH*, 27 Dec, p1) whilst the Prime Minister announced that he would consider changes to the Racial Discrimination Act to protect pastoral leases against native title claims. (*Aus*, 27 Dec, p1)

Whilst State Premiers called for extinguishment of native title, Professors Garth Nettheim and Hal Wootten stated that compensation would be required and in some cases this would require substantial amounts, (*SMH*, 28 Dec, p1) a view supported by Macquarie University law Professor Tony Blackshield. (*Aus*, 4 Jan, p6)

President of the Human Rights and Equal Opportunity Commission, Sir Ronald Wilson, said 'the pressure on the Government to override the [Wik] decision is ill-conceived and lamentable' and called for urgent high-level consultations between the Government and indigenous leaders about any amendments to the Act. (*CT*, 30 Dec, p3)*

The Deputy Prime Minister, Mr Tim Fischer, said he supported legislation that would give certainty of title for pastoral leaseholders; he also would not rule out a referendum on native title. (*Age*, 31 Dec, p1)* Victorian Premier, Mr Jeff Kennett, called for a double dissolution election if the Senate blocked legislation wiping out native title on pastoral leases. (*Fin R*, 31 Dec, p1)*

The Courier Mail's editor believes Prime Minister Howard was decidedly non-committal in his new year message in relation to native title. (*CM*, 2 Jan, p14) The editor of the Age believes 'it is reassuring that, although Mr Howard shied away from filling in the details of a Government response, he has put on record his recognition that fundamental issues of justice are involved.' (*Age*, 2 Jan, pA10)

Noel Pearson has defended the role of the High Court and the separation of powers and described the attacks on the High Court by national leaders as 'unseemly'; he states 'there is an unwritten convention that the executive should not criticise the judicial arm.' (*Aus*, 2 Jan, p11) Historian Henry Reynolds claims that the historical record suggests that pastoral leases were never intended to extinguish native title and that mutual land use was envisaged and occurred. (*CM*, 3 Jan, p11)

In response to the Wik decision the NT government wants the Aboriginal Land Fund money re-allocated because the court found pastoral leases had extinguished less land than previously thought. The money should be used to negotiate regional agreements. (*Fin R*, 3 Jan, p3) The editor of the Australian criticised the State premiers' response to the Wik judgment as 'heated' and believes that 'new energy, goodwill and leadership must be devoted to negotiation.' (*Aus*, 4 Jan, p16) The editor of the Canberra Times described the reaction of lobbyists and state premiers reaction as hysterical and one which will cause 'major embarrassment in the world and poison the reconciliation process for years.' (*CT*, 5 Jan, p6)

Rural lobbyists fear that the High Court's Wik decision will force banks to re-evaluate their loans to pastoral lease holders. (*Aus* 6 Jan, p3) Meanwhile the president of the National Farmers Federation, Mr Donald McGauchie said farmers would not negotiate with Aborigines over native title rights on pastoral leases, believing agreements between farmers and Aborigines were not legally binding and would not resolve the land ownership questions. (*Age*, 6 Jan, pA1)

Claims by state and national farming bodies that banks would be reluctant to lend to the rural industry because of native title uncertainty, have been revealed as misleading; the Australian Bankers' Association told the National Farmers Federation in June that banks could not identify circumstances where native title would conflict seriously with their interests as security holders. (*WA* 8 Jan p4 and 9 Jan, p12)*

Acting Prime Minister, Mr Tim Fischer, expressed doubts about extinguishing native title reflecting a growing view among industry groups, some State Governments and experts that the Federal Government should consider ways of legislating to manage the implications of the Wik decision, rather than risk further

legal uncertainty by seeking to override it; (*Fin R*, 7 Jan, p1 and 7) a view not held by Attorney-General and Minister for Health in the Northern Territory, Denis Burke: 'the uncertainty created by the Wik decision can only be resolved by legislating away that uncertainty or by years and years of litigation.'*(Aus*, 7 Jan, p11)

President of the Queensland National Party, David Russell QC, claims that pastoral lessees have been dispossessed and lists the principles on which any legislative resolution should be based, including a proposal to convert all pastoral leases to freehold. (*Aus*, 7 Jan, p11) The West Australian Government is preparing to push the Federal Government to extinguish native title claims over all pastoral leases by resurrecting draft legislation discarded by the Labor Government in 1993 which provided that outcome. (*Aus*, 8 Jan, p3)

Cape York Land Council to call national summit in Cairns to address issues arising from the Wik case. (*SMH* 9 Jan, p9)* Meanwhile Acting Prime Minister Mr Fischer promised an urgent response to the Wik decision after the Queensland Government complained that land and natural resource administration in the state was paralysed. (*Ad*, 9 Jan, p7)*

The issue of compensation payments to native title holders in the event of extinguishment is under dispute, there is conflict between federal officials and their counterparts in Western Australia and the Northern Territory who believe compensation payments would be manageable as they would be spread over a number of years. (*Aus* 9 Jan, p4)

Professor Marcia Langton analyses the hysteria that has come from some industry groups and State Premiers in response to the Wik decision and calls for a process of negotiating mutually agreeable principles of coexistence. (*Fin R*, 10 Jan, p18)

State and Commonwealth officials met yesterday in their first step to preparing a response to the [Wik] judgment; Western Australia and Queensland have received similar advice indicating that all but freehold land is now open to native title claims. (*Aus*, 11 Jan, p1 and 2) However political observers believed the Queensland Government is set to soften its hardline stance on native title and agree to work within the High Court decision on Wik. (*CM*, 11 Jan, p 1)

Acting Prime Minister, Mr Fischer, accused the four majority judges in the Wik case of unacceptable judicial activism focussing his attack on the newest judge Justice Michael Kirby; he said all four judges were guilty of making law rather than applying it. (*SMH*, 11 Jan, p1) In the same speech he also claimed that Aboriginal pastoral companies could face native title claims from other Aboriginal groups. (*DT*, 11 Jan, p14)*

ATSIC Commissioner Geoff Clark said State Governments could avoid compensation payments if they negotiated with indigenous people. (*Age*, 13 Jan, pA3) He also said federal and state governments had hidden agendas in the debates over native title and were excluding ATSIC from discussions. (*CT*, 13 Jan, p3)*

Acting PM Tim Fischer, suggested the Government's response to the Wik decision required 'certainty clarity and consistency' for pastoralists (*CM*, 16 Jan p2) and would be a national one made by the Commonwealth after consultation with the States (*Fin R*, 15 Jan p3). The WA government which originally called for validation of invalid pastoral leases indicted its willingness to consider federal legislation which defined and validated pastoral lease rights (*Fin R*, 15 Jan p3). The NT government pushing for a quick response from the federal government said Mr Howard should consider a double dissolution election if necessary (*CM*, 14 Jan p2). NSW farmers called for either legislation to guarantee pastoral leases over native title or proof to pastoralists that their right to their land was inalienable.

(Tel M, 15 Jan p1)

In the lead up to the Wik summit, Aboriginal leader Noel Pearson indicated that simplification of native title negotiation rights for small mining projects was supported by indigenous groups (CM, 16 Jan, p6). The mining industry wants the Government to recognise agreements negotiated outside the Native Title Act provisions. (CM, 14 Jan, p2)

Garth Nettheim reviewing the reaction to the Wik decision to date in a SMH feature article (SMH, 14 Jan, p13) suggested a calm consideration which included not only political leaders but indigenous Australians would be more beneficial than an instant response.

In a divided response by the ALP to the Wik decision, Queensland Opposition leader, Peter Beattie said he would not rule out extinguishment of native title. However federal Opposition spokesperson Daryl Melham rejected extinguishment as an option. (Aus, 15 Jan, p2)

States most affected by the Wik decision would meet to present a unified view to the Federal Government. (CM, 17 Jan, p.2)* Acting Prime Minister, Mr Fischer, endorsed the views of state governments for extinguishment of native title on pastoral leases and the Queensland decision to freeze activity on leasehold land. (Aus, 18 Jan, p2)

The Australian Institute of Valuers and land Economists has criticised what it considers ill-informed comments about the Wik decision; the AIVLE blames various stakeholders affected by the decision for causing misunderstanding among valuers, financiers, agents and property investors, and for raising fears about falls in land values: 'the Wik decision should not lead to a general devaluation of pastoral leases.' (Aus, 18 Jan, p1 Property section)

The Human Rights and Equal Opportunity Commission has reiterated its call for the Federal Government to enter into negotiations with indigenous leaders before considering amendments to the Native Title Act in the wake of the Wik decision.... 'the only way any practical difficulties relating to land use can be overcome is through constructive and meaningful negotiations..' (Press release 20 Jan)

The Western Australian and Northern Territory governments are pushing a plan to give Aborigines access rights to pastoral leases under legislation but wipe out the common law right for native title and farms to co-exist. (Fin R, 20 Jan, p3)* Queensland Premier Mr Borbidge secured Western Australian support to press the Federal Government to ensure all existing pastoral leases extinguish native title. (Ad, 20 Jan, p6)* Australian Mining Industry Council head, Mr Campbell Anderson, said legislative certainty of title was needed for property owners...this could be done without extinguishing native title, while remaining consistent with the Racial Discrimination Act. (Age, 20 Jan, pA2)*

Federal Cabinet has been warned by the Attorney-General's Dept. that any legislation to extinguish native title on pastoral leases would be open to legal challenge and could lead to massive compensation claims. (Age, 20 Jan, pA1) Meanwhile former Attorney General Mr Michael Larvach, a special counsel on native title, said support for a sunset clause on native title was misguided and flawed, such a clause would introduce racial discrimination and the spectre of extensive Commonwealth compensation. (CM, 20 Jan, p2)

The editor of the SMH believes the 'decision not to send a Federal minister to this weeks Wik summit in Cairns is a sign that the voice of Aborigines on native title issue does not make a compelling call on the Howard government.' (SMH, 20 Jan, p14)

Aboriginal leaders criticised the federal government for not sending a representative to the Wik summit to be held 22 Jan (*WA, 21 Jan, p4*) and the ATSIC Chairman said Aborigines were happy to negotiate on the Wik decision but extinguishing native title rights on pastoral leases was 'out of the question'. (*CM 22 Jan, p1*); Noel Pearson said the goal of the Cairns Wik summit was to find 'pragmatic and workable solutions to the problems raised by the Wik summit'. (*SMH, 21 Jan, p7*).

On 20 January the Prime Minister called for a meeting of state and federal leaders to be held on the 22 January to discuss the Wik decision (*Aus, 21 Jan, p1 and 4*)*. The State Premiers were seeking support for some extinguishment of native title. (*Aus, 22 Jan, p6*)* The WA Premier said states would seek a guarantee that at least 75% of any compensation costs would be met by the Commonwealth (*Ad, 21 Jan, p2*) The Victorian Premier called for federal legislation that would allow state governments to negotiate directly with Aboriginal communities without the use of lawyers (*Age, 22 Jan, pA6*).

The Age reported that federal government sources said the government had ruled out extinguishment of native title. (*Age, 21 Jan, p3*) The National Native Title President said the government was considering a tribunal proposal for an inquiry into native title and pastoral coexistence which would consider provisions for statutory access clause as an alternative but not substitute for native title rights. (*Aus, 22 Jan, H6*)

Peter Yu, Executive Director of the Kimberley Land Council, argues that there is a growing consensus in the indigenous community in favour of regional agreements. (*Aus, 22 Jan, p11*)

While Mr Court linked uncertainty over native title to unemployment, ACOSS and Uniting Church leaders said it would oppose extinguishment of native title or denial of land rights. (*WA, 22 Jan, p1*). The United Graziers Association of Queensland oppose regional agreements as a method of addressing native title claims on pastoral leases (*Press Release, 21 Jan*) but the Cattlemen's Union endorsed the Cape York regional agreement, saying legislation alone was not the solution. (*CM, 23 Jan, p6*).

Aboriginal leaders are unlikely to agree to validation of pastoral and mining leases because of inadequacies in the compensation process. Noel Pearson said an alternative assessment method was needed for assessing claims. (*SMH, 25 Jan, p4*)

The Opposition leader, Kim Beazley, called for a bipartisan response to the Wik decision. He ruled out support for changes to the Racial Discrimination Act and extinguishment of native title rights but said the Opposition would consider amendments to the Native Title Act to clarify miners' and pastoralists' rights. (*Aus, 27 Jan, p2*). Democrats leader Cheryl Kernot accused the Prime Minister of using the Wik decision for political gain and for not sending a representative to the Wik summit. (*Mer, 25 Jan, p8*)

Kimberley MLA Ernie Bridge said the issue of native title was becoming 'money game' and urged Aboriginal elders to be more involved in the debate. He said they have the 'most important knowledge but least resources' to participate; Fred Chaney, a former Fraser government minister and member of the NNTT said the Wik and Mabo decisions indicated the need for a 'real dialogue' between Aboriginal and non-Aboriginal interests. (*SMH, 25 Jan, p17*)

The Cairns Wik summit drew up a list of five principles relating to future talks with the Howard government; the non extinguishment of native title, no amendment to the Racial Discrimination Act, respect for the High Court's native title decisions, resolution through negotiation and agreements and further negotiation over

amendments to the Native Title Act (*Fin R*, 28 Jan, p7)*.

Lois O'Donoghue, in her first speech since retirement from ATSIIC, warned that the Sydney 2000 Olympics could be disrupted if Aboriginal rights were undermined. She said Wik should not be regarded as a source of alarm but a 'creative opportunity to break out of the national impasse on indigenous issues'.(WA, 30 Jan, p4)*

The National Farmers Federation want certainty in the form of validation of pastoral leases although they have moved away from their initial call for extinguishment of native title.(Age, 31 Jan, p5)

The Foreign Minister's request for a human rights clause in an international trade agreement with the EU to be removed raised concern that the Government may be preparing for amendment to the Racial Discrimination Act (WA, 31 Jan, p6).*

Go back to [Contents](#)

RECENT PUBLICATIONS

Blackshield, S. 'Crescent Head Native Title Agreement', *Aboriginal Law Bulletin* Vol 3, no. 88, January 1997: 9. The author describes the history and outcome of the agreement which involves the first successful resolution of a claim under the *Native Title Act 1993* (Cwth).

Willhelm, E., 'Queensland pastoral leases and native title: *Wik Peoples v Queensland*. Casenote', *Aboriginal Law Bulletin*, Vol 3, no. 89, February 1997: 23-26. The article provides an overview of the High Court case of 23 December 1996 which found that native title and pastoral leases may co-exist.

Galarrwuy Yunupingu (ed.), *Our Land is Our Life: Land Rights Past Present and Future*, University of Queensland Press, St. Lucia Qld., 1997. This edited collection of papers written by Indigenous Australians was launched by the Governor-General in February.

Deane, Sir William, Governor-General, *Some Signposts from Daguragu. The Inaugural Vincent Lingiari Memorial Lecture*, Council for Aboriginal Reconciliation, AGPS, 1997. The speech was delivered on 22 August 1996 at the Northern Territory University, Darwin to mark the 30th anniversary of the 1966 Wave Hill Strike.

Canada. Royal Commission on Aboriginal Peoples, 1996. This five volume report makes wide ranging recommendations on indigenous rights. It is available on the Internet at <http://indigenous.bc.ca> and is also to be published in CD Rom format. A summary of recommendations is listed in the *Aboriginal Law Bulletin* Vol 3, no. 88, January 1997: 19.

Ray, A.J. *I Have Lived Here Since the World Began: An Illustrated History of Canada's Native People*, Toronto, Lester Publishing, 1996 . Recommended for its coverage of the history of Canada's indigenous peoples including the struggle for recognition of land rights.

Table of Contents

[Native title News of December 96 - January 97](#)(top of newsletter)
[Wik decision](#)